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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in Iraq

Report submitted by the Special Rapporteur, Andreas Mavrommatis*

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* This document is submitted late so as to include the most up-to-date information possible.

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Summary

The present report covers the period from 4 September 2003 to 9 February 2004. By its resolution 2003/84, the Commission renewed the mandate of the Special Rapporteur on the situation of human rights in Iraq for another year and requested him to focus on newly available information about violations of human rights and international law by the Government of Iraq over many years. However, the Special Rapporteur has also received information on the overall situation of human rights, including allegations regarding recent events in Iraq.

The Special Rapporteur did his best to undertake as soon as possible a visit to Iraq in accordance with his mandate. Unfortunately, the visit scheduled from 22 to 27 September 2003 had to be postponed, for security reasons, sine die, after the tragic bomb attack against the headquarters of the United Nations Mission in Baghdad on 19 August 2003, followed a few weeks later by another attack against United Nations headquarters in Baghdad on 22 September and against the premises of the International Committee of the Red Cross on 27 October 2003. The persistent insecurity throughout the country severely restricts the freedom of movement necessary to the Special Rapporteur to make contacts, fix appointments or visit locations in and outside Baghdad, in order to collect and examine the best evidence which is now to be found in Iraq.

When the Special Rapporteur realized that a visit to Iraq would not be possible in the near future, he made a number of alternative arrangements to obtain whatever new evidence was available and held about 20 different meetings, mainly in Geneva but also in New York and elsewhere, with the Permanent Representatives of Iraq, Kuwait, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Coalition Provisional Authority (CPA) experts, and representatives of a number of United Nations agencies, international non-governmental organizations and the Executive Director of the Oil-for-Food Programme. He also held meetings in Madrid during the Iraq reconstruction Donor Conference (23-25 October 2003), and had lengthy consultations with a Kurdish delegation in Amman (7-10 December 2003), and several meetings in Kuwait (17-21 January 2004).

Since the convening of the fifty-eighth session of the General Assembly, the most important development has been the deterioration of the security situation in Iraq, which has had an adverse effect not only on the long-overdue reconstruction of the country and the alleviation of the sufferings of the Iraqi people, but also impeded efforts to investigate past violations. Another significant development was the work done in respect of establishing a criminal court to try the former leadership of the country, although divergences of opinion remain in respect of issues such as the composition, experience, competence and penalties, particularly the death penalty, that the court may impose.

The Special Rapporteur has, on several occasions, been informed by non-governmental organizations of allegations regarding the conditions of detention of people arrested by the CPA forces, mainly in connection with security crimes or terrorist acts, as well as about unnecessary innocent civilian casualties during security operations by CPA forces. The Special Rapporteur brought these allegations to the attention of both the CPA and the Iraqi Minister of Human Rights with the request that he deal with them urgently.

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During his consultations with a Kurdish delegation in Amman in December 2003, the Special Rapporteur heard evidence on issues such as the Anfal campaign, executions and mass graves. There now exists documentary evidence inculpating the mastermind and chief executioner of these crimes, Ali Hassan Al-Majeed, alias "Chemical Ali", and proves the existence, at the highest governmental level, of the criminal intent to mercilessly exterminate the Kurds and implant people of mainly Arab origin in their homes and villages, in a process that amounted to genocide.

Testimonies made available to the Special Rapporteur proved that there was a deliberate and carefully carried out campaign to arrest, execute, relocate or deport Kurds, as well as other nationalities such as the Turkmen, Assyrians and Chaldeans. The fact that the immovable properties of these people were forcibly seized without compensation has created a potentially explosive problem.

In relation to Kuwaiti prisoners of war (POWs) and missing persons, including third-country nationals, the Special Rapporteur, during his visit to Kuwait in January 2004, had ample opportunity to meet with Kuwaiti officials and visit the General Department of Criminal Evidence where investigation into the fate of the missing and the identification of remains takes place. He was also given various documents by the Kuwaiti authorities recently discovered or received from Iraqi sources indicating the culpability, at the highest level of the Iraqi authorities, and their full knowledge of the fate of the Kuwaiti POWs and other third-country nationals who were unaccounted for and who had been executed. The Government of Kuwait must be praised for the efficient and tactful way in which it handled the whole issue, including the quest for information about the fate of the missing and the support and sustenance provided to their families.

The Kuwaitis, using several teams in Iraq, were the first to recover, through scientifically performed exhumations, remains from mass graves and subsequently identified them. The Special Rapporteur not only condemns the systematic and grave violations of the human rights of Kuwaiti and other third-country nationals who were executed by the Iraqis by order of the highest authority, but is also of the opinion that close relatives and other dependants of people whose remains have been identified are entitled to claim compensation.

Mass graves were one of the first things that immediately surfaced after the collapse of Saddam Hussein's regime. The Special Rapporteur received considerable information on the matter from the CPA and held a series of meetings with experts acting on its behalf during which he heard about the main measures taken by the CPA, through its Office of Human Rights and Transitional Justice and with the cooperation of international and non-governmental organizations, as well as with the involvement of the Iraqi leadership. It is clear that investigation into the mass graves will be difficult and time-consuming, and presupposes the existence of necessary data, including accurate lists and database containing all details required for DNA examinations, and coordination between the various teams, forensic and others, that carry out work in relation to mass graves. The Special Rapporteur underlines the role played by non-governmental organizations to trace persons who have either witnessed or survived mass executions or could testify about other serious human rights violations.

Obtaining newly available information about violations of human rights and international law by the former Government of Iraq proved to be an unexpectedly difficult task because of the

constantly deteriorating security situation, which forced the United Nations as well as other international, governmental and non-governmental organizations to evacuate their staff from the country. Despite continuous efforts by the Special Rapporteur to obtain the best information, it proved to be almost impossible without a visit to Iraq, which would have been the only way to achieve the best results and to accomplish what he was mandated to do. As he was prevented from going to Iraq, he had to depend on external sources which proved inadequate because of, inter alia, poor communications, despite efforts of the Permanent Mission of Iraq in Geneva, changes in appointments and dates, failure of people to turn up, economic constraints, and also because it was impossible, for similar reasons, to communicate with important political and religious Iraqi personalities or to meet them. Therefore, the Special Rapporteur was not able to collect and appraise significant new evidence on such important issues as the oppression of the majority Shi`ah community, the ecological damage to the Marshlands, religious freedom and the denial of civil, political, economic, social and cultural rights. Even in respect of certain matters such as the mass graves, the Kuwaiti POWs and the Anfal and Halabcha campaigns, the security situation which brought so many things to a standstill did not permit him to draw final conclusions on these chapters.

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Introduction

1. By its resolution 2003/84 of 25 April 2003, the Commission on Human Rights renewed for a further year the mandate of the Special Rapporteur on the situation of human rights in Iraq. In particular, the Commission requested the Special Rapporteur to submit an interim report on the situation of human rights in Iraq, focusing on newly available information about violations of human rights and international law by the Government of Iraq over many years, to the General Assembly at its fifty-eighth session, and to report to the Commission at its sixtieth session. This report should be read in conjunction with the report submitted to the General Assembly (A/58/338) which refers to the difficulties that the Special Rapporteur was encountering as a result of the continually deteriorating security situation in Iraq.

2. While the Special Rapporteur has, as mandated, paid due attention to the emphasis laid by the resolution on the examination of new evidence of past human rights violations, he also received information on the overall situation of human rights in Iraq. He had numerous contacts with and sought the views of concerned members of the diplomatic community, Permanent Representatives in Geneva and New York, United Nations specialized agencies, representatives of the Coalition Provisional Authority (CPA), members of the Governing Council of Iraq, including ministers, Iraqis who were in a position to provide pertinent information, as well as national and international non-governmental organizations (NGOs). Information received included allegations regarding recent events in Iraq such as arrests and detention as well as loss of life.

3. As already mentioned in his latest report to the General Assembly (A/58/338, paras. 3-5), the Special Rapporteur tried his utmost to undertake as soon as possible a visit to Iraq in accordance with his mandate. Unfortunately, the visit scheduled from 22 to 27 September 2003, which had been welcomed by the CPA and the Governing Council, had to be postponed sine die for security reasons after the bomb attack against the headquarters of the United Nations Mission in Baghdad on 19 August 2003, which tragically took the lives of the Special Representative of the Secretary-General for Iraq - and United Nations High Commissioner for Human Rights - and of 21 other United Nations officials, and injured more than 150 people.

4. This attack was followed by another one on 22 September against the United Nations headquarters at the Canal Hotel in Baghdad and a series of planned attacks the following month, in particular, the one against the premises of the International Committee of the Red Cross (ICRC) in Baghdad on 27 October, as well as daily skirmishes, ambushes and suicide-bombings targeting both Iraqi nationals and foreigners during the autumn of 2003 and in January 2004 in various parts of the country. This testifies to the persistent degradation of security conditions which severely restrict the freedom of movement necessary to the Special Rapporteur to make contacts, fix appointments or visit locations in and outside Baghdad, and collect the best evidence available.

5. As soon as the Special Rapporteur realized that a visit to Iraq would not be possible in the near future, he made a number of alternative arrangements to obtain newly available evidence during meetings outside Iraq in such places as Geneva and New York and in countries neighbouring Iraq to which witnesses could have access without particular difficulties. The present report summarizes the main results of these meetings:

(a) A series of meetings in Geneva which took place between October 2003 and January 2004 with the Permanent Representatives of Iraq, Kuwait, the United Kingdom of Great Britain and Northern Ireland and the United States of America, and with CPA experts dealing with issues such as transitional justice, the Iraqi Special Tribunal, mass graves and other human rights violations. Contacts also included telephone conferences;

(b) Meetings in New York with United Nations bodies and specialized agencies, international non-governmental organizations and the Executive Director of the Oil-for-Food Programme;

(c) Meetings in Madrid during the Iraq Reconstruction Donor Conference, (23-25 October 2003);

(d) Consultations with a Kurdish delegation in Amman from 7 to 10 December 2003; and

(e) Meetings in Kuwait, from 17 to 21 January 2004.

6. This way of proceeding, which was the only possible way under the circumstances, was not devoid of difficulties as many times meetings had to be postponed, persons to be interviewed did not turn up, or information made available was not complete. Hence the difficulty encountered in dealing with certain chapters of past human rights violations.

7. Although a lot of ground has been covered as a result of the above meetings, much yet remains to be done and advantage should be taken, to the extent possible, of the period up to the sixtieth session of the Commission. Therefore, the Special Rapporteur has been, at the time of the drafting of this report, planning a new series of similar meetings which would require the submission of an addendum to the present report. Should security conditions improve in Iraq, the Special Rapporteur would immediately undertake a visit which, more than anything else, would enable him to collect the best evidence available in situ.

8. Since October 2003, the Special Rapporteur had to concentrate on issues such as summary executions, mass graves, the Anfal campaign and the "Arabization" process, including property rights. Evidence gathered so far points to a consistent pattern of gross and systematic human rights violations by Saddam Hussein's regime, accompanied by an elaborate system of suppressing the truth at most, if not all, governmental levels. It is hoped that in the near future, the Special Rapporteur will be in a position to finally and fully describe violations of human rights and international law, including the violation of international conventions ratified by Iraq. The pattern of these violations, as well as specific cases and documents revealing this pattern and on which the Special Rapporteur based his findings, will be included.

9. Some important chapters relating to gross violations, such as oppression of the Shi'ah majority, the carnage during the uprising (intifada) in the south following the liberation of Kuwait, the situation in the Marshlands and the ecological catastrophe perpetrated there, as well as the absence of democratic processes and the elimination of any form of political opposition are some of the important items that the Special Rapporteur proposes to examine on a

priority basis as soon as circumstances permit. Nearly insurmountable communication difficulties compounded those emanating from the deteriorating security situation and thus prevented the detailed examination of recent evidence that has surfaced since the collapse of Saddam Hussein's regime.

I. DEVELOPMENTS SINCE THE CONVENING OF THE FIFTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY

10. The most important development since the convening of the fifty-eighth session of the General Assembly is the deterioration of the security situation in Iraq which has had an adverse effect not only on the long overdue reconstruction of the country and the alleviation of the sufferings of the Iraqi people, but also impeded efforts to thoroughly investigate past violations. The arrest of Saddam Hussein himself, as well as of many of his lieutenants, have not as yet had the expected effects.

11. Another significant development was the work done in respect of establishing a criminal court to try the leadership of the country who are going to be facing grave charges of crimes against humanity, war crimes and gross violations of human rights.

12. The Special Rapporteur has received information on the Iraqi Special Tribunal from the CPA, as well as from NGOs and others, which has revealed, mainly among the NGO community, divergences of opinion in respect of a number of issues, including the composition, experience, competence and the penalties, particularly the death penalty, that the court may impose, as well as the existence or otherwise of specific chambers that would have competence to deal with crimes committed against Kuwait and the Islamic Republic of Iran. Ensuring the fairness of trials is another important issue.

13. Another issue raised by NGOs on several occasions are the allegations regarding the conditions of detention of people arrested by the occupying Powers mainly in connection with security crimes or terrorist acts, and whose whereabouts were not known to their families. Similarly, there were allegations about unnecessary innocent civilian casualties during security operations by CPA forces. The Special Rapporteur brought such allegations to the attention of both the CPA and the Iraqi Minister of Human Rights, with the request that they deal with them urgently, as not to do so would impede the democratization process. In respect of the court, the Special Rapporteur paid a lot of attention to this particular issue, because, as he stressed to all interested parties, strict compliance with the International Covenant on Civil and Political Rights, and in particular with article 14, is mandatory. One cannot recommend that there should be no immunity for perpetrators of gross human rights violations and that they should be tried by a competent court without at the same time stressing the necessity of compliance by Iraq with its conventional obligations and international standards regarding such trials.

14. During the process of examining the gross violations that are described in the next chapters, the Special Rapporteur received conclusive evidence of instances of torture, the existence of torture tools, including those that could cause death by suffocation, evidence of

summary execution of prisoners, psychological pressure, collective rape by guards, and even forcing women to give birth in prisons in the presence of other inmates as well as male prison guards. In particular, in the case of Kuwait, the Special Rapporteur has been in a position to examine recent evidence of gross violations of human rights such as extrajudicial killings, summary or arbitrary executions, arbitrary arrests and detention, lack of due process of law, enforced or involuntary disappearances, torture and other cruel, inhuman or degrading treatment, the misappropriation and looting of public and private property, the burning of oil wells with dire environmental consequences, limited access to health care and food, severe restrictions on the freedom of association and expression, as well as forced change from Kuwaiti to Iraqi citizenship (see E/CN.4/1992/26).

15. Since the end of the summer of 2003, there has been close cooperation not only with the interim authorities in Iraq, but also with the Permanent Missions of Iraq in Geneva and New York. Unfortunately, as they experience difficulties in communicating with their capital, matters such as ensuring the availability of witnesses are often delayed. Yet, it is expected that when the Special Rapporteur's report is given to the representatives of the Government of Iraq, in the normal process, they would be in a position to corroborate the findings based on their own inquiries.

II. ANFAL AND OTHER GRAVE HUMAN RIGHTS VIOLATIONS OF THE KURDISH PEOPLE

16. As the northern governorates enjoyed Anglo-American protection from incursions by Saddam Hussein's forces, they were already in a position to begin investigations into gross violations of human rights some years back, and were therefore ready to report to the Special Rapporteur their past as well as present findings. From 7 to 10 December, he met in Amman with a Kurdish delegation consisting of four of the six persons who were originally going to produce testimony on issues such as the Anfal campaign, missing persons, executions and mass graves, as well as the use of chemical weapons against the inhabitants of Halabcha. Unfortunately, the expected evidence on Halabcha was not forthcoming and the evidence of mass graves, due to the lack of identification, is not yet complete.

17. There is, however, abundant evidence, including statements of survivors, regarding the Anfal campaign. Although the persecution of the Kurds did not start with Saddam Hussein, but years earlier, around 1920, the former regime in Iraq began a horrible process of arresting people, taking them to holding centres or prisons and then transporting them to places of execution. This process took place all over Iraq. The mastermind and chief executioner of these abominable crimes was Ali Hassan Al-Majeed, alias "Chemical Ali". There is documentary evidence inculpating him and revealing his intention to mercilessly exterminate the Kurds in connection with the process of ethnic cleansing and installing Arabs in their homes and villages. The whole process amounted to genocide and should be treated as such.

18. Often accompanied by traitor Kurds, the Iraqi army used to encircle and seal off streets, neighbourhoods, villages and even cities inhabited by Kurds. They would arrest all Kurdish inhabitants, including women and children. The women and children were separated from the men and each group was transported separately to places of detention. The process

of elimination started immediately: men were loaded on to trucks and taken to a place where huge trenches had already been dug, and they were executed, mostly be being shot through the head and from behind. The trenches were then filled with earth. Eyewitnesses to transports of civilians by the army and the return of empty trucks to the places of detention were found and have given written statements. After the fall of the regime, and following the discovery of mass graves, some of which were dug in a haphazard manner, material evidence such as garments, other personal possessions and identity documents indicated that many of the remains were those of people of Kurdish origin. Unfortunately, no scientific process of identification, including DNA tests, has as yet taken place, although a lot of preparatory work has been going on.

19. In the case of women and children, it appears that at least some of them were not immediately executed but that a very few of them, especially women over 50, were released and survived to tell us about the fate of others who have not been heard from since.

20. A number of statements given by survivors were made available to the Special Rapporteur, according to which:

(a) Victims, including children, were left to die without any medical attendance;

(b) Female teenagers were abducted and taken away either to be sold into slavery or to be sexually exploited;

(c) Torture was systematically practised;

(d) Women were raped by prison guards in front of other inmates; and

(e) Pregnant women were forced to give birth in their cells while they were watched by male guards.

21. Women and children were taken away for execution in the same manner as men and there is at least one instance of the remains of a mother clutching her infant child having been found, both of them shot in the usual manner of executions through the back of the head. The remains of scores of similarly executed children were found in several mass graves.

22. The compilation of an accurate list of missing persons has not yet been completed, as this is a huge task. The tentative figure given to the Special Rapporteur by the regional authority is 182,000. It appears though that there must be double entries, made by relatives living in different parts of Iraq. It should be recalled that the ethnic cleansing of Kurds took place not only in the northern governorates, where most of the Kurds live, but all over the country.

23. As a result of the investigations conducted so far and the evidence made available to the Special Rapporteur, which is amply corroborated, it is now beyond doubt that there was a deliberate and carefully executed campaign to arrest and execute, relocate or deport Kurds, as

well as other nationalities such as Turkmen, Assyrians or Chaldeans in a process which came to be known as "Arabization". The properties of these people were given mostly to Arabs, without the payment of any compensation to their owners. Title deeds were issued in many instances to the new occupants upon the payment of a purchase price, and some properties changed hands more than once; this created a potentially explosive legal and political problem that will require patient and careful legal and practical solutions.

III. KUWAITI PRISONERS OF WAR (POWS) AND MISSING PERSONS, INCLUDING THIRD-COUNTRY NATIONALS

24. Soon after the collapse of the former regime the Special Rapporteur began receiving information about the discovery of mass graves, some of which, when exhumations took place - albeit often in a haphazard manner - contained remains that could have belonged to Kuwaiti POWs and missing persons, including third-country nationals.

25. As a result of new information received from Kuwaiti representatives, it became clear that a visit to Kuwait, where scientific identification work was taking place and newly found documentary evidence was available, was necessary. During that visit, which eventually took from 17 to 21 January 2004, the Special Rapporteur, accompanied by his assistant, had the full cooperation of the Government of Kuwait.

26. The Special Rapporteur had meetings with the Speaker of the National Assembly, the Prime Minister, the Minister for Foreign Affairs, the Under-Secretary of the Interior, the Chairman of the National Assembly, the Chairman and members of the Human Rights Committee of the National Assembly, the Deputy Chairman and the Director-General of the National Committee for Missing Persons and Prisoners of War Affairs, the Director and members of the Martyrs' Office, which provides support to the families of persons killed by the Iraqis during the illegal occupation of Kuwait and of POWs and other missing persons, as well as the Director and other members of the Centre for Research and Studies on Kuwait. The Special Rapporteur also visited the General Department of Criminal Evidence where investigations into the fate of the POWs and the identification of remains take place.

27. The Special Rapporteur traced through several files the process of investigation leading to the identification of missing persons and was also given a number of documents from which the culpability of the Iraqi authorities at the highest level, in particular Ali Hassan Al-Majeed ("Chemical Ali") and Sabawi Ibrahim, half-brother of Saddam Hussein, became evident.

28. Since the return of the Special Rapporteur from Kuwait, another recently discovered official Iraqi document was made available to the Special Rapporteur. This document, dated 5 January 1991, is signed by the Director of Iraqi Intelligence for the Gulf Region and bears Sabawi Ibrahim's signature. It suggested that a "fair punishment" be inflicted on the criminals whose names were listed therein because of their participation in acts of violence in the "Kuwait Governorate". The document mentions, inter alia, other names of people to be transferred to a specialized tribunal with a view to "executing" their sentences as envisaged.

29. During the Special Rapporteur's visit to Kuwait, the authorities provided him with a number of documents received from Iraqi sources after the collapse of the former Iraqi regime, stating that the head of the Iraqi delegation to the Tripartite Commission, who was also the Under-Secretary for Foreign Affairs, was well informed about the fate of the Kuwaiti POWs and other third-country nationals unaccounted for who had been executed.

30. The most horrible thing about the abominable crimes committed against POWs was that the Iraqi authorities had often given the order for their almost immediate execution and at the same time had set up an elaborate machinery of deception to hide this fact from the relatives who had the right to know, as well as from the Tripartite Commission and the international community. The Special Rapporteur himself, who spent almost a whole day in the Iraqi Ministry of Foreign Affairs when he visited the country in 2002, tried in vain to convince a large team of Foreign Ministry and other officials to stop giving unsatisfactory information about the POWs and to make a clean breast of it. But unfortunately, they persisted in their story, although they knew very well what was true and what was not. The same tactics were used and the same false explanations were given to the High-Level Coordinator appointed by the Secretary-General (see S/2003/1161).

31. The Government of Kuwait must be praised for the patient, appropriate, efficient and tactful way in which it handled the whole issue, including the quest for information about the fate of the missing and the support and sustenance provided to their families. Characteristically, it should be stressed that the Kuwaitis, using several teams in Iraq, and having been the first to obtain information within the framework of the Tripartite Commission as well as from elsewhere, were the first to recover remains from mass graves through scientifically performed exhumations and to identify them. The manner in which the Government of Kuwait went about this issue should serve as an example for other countries that have the misfortune to be faced with cases of missing persons.

32. To date, exhumations have taken place at two locations, Samawa and Karbala. At the former, where the remains of 142 persons have been found, the exhumations appear to have been completed, whereas at Karbala, exhumation work had to be suspended for security reasons, with the remains of 15 persons having been brought back to Kuwait for further investigations. Until the date of the Special Rapporteur's visit, positive identification of remains from both sites had been completed in the case of 75 POWs, whom 71 were Kuwaiti, two Lebanese, one Egyptian and one Saudi Arabian.

33. The process of exhumation was always extremely careful so that any evidence such as personal effects, clothing or spent cartridges could be collected for subsequent examination, with a view to facilitating the identification of the remains and identifying the method used to execute the missing persons.

34. Mortal remains and other evidence found were transferred to Kuwait to be thoroughly examined, including DNA tests, for the purpose of identification. If the remains were not those of Kuwaitis, they would be returned to Iraq, in conformity with the official procedure adopted by the Tripartite Commission at its last meetings.

35. The careful process of identification included five stages:

(a) Collecting information;

(b) Forensic medical examination of the remains;

(c) Facial reconstruction;

(d) Forensic dental examination;

(e) DNA fingerprinting.

36. During his visit to the General Department of Criminal Evidence, the Special Rapporteur was in a position to ascertain the scientific accuracy of the identification processes. During consultations at the office of the Attorney-General, the Special Rapporteur examined several files of cases of POWs whose remains had been identified; all of them had been executed, but in some cases, the death certificates issued by Iraqi authorities referred to death as "a result of heart attack". Also, in a register of persons arrested in Kuwait during the occupation that had been recovered, false information, as proven by the identification of the remains, was given by the Iraqis regarding the actual circumstances surrounding the death of that person.

37. It appears that on the basis of information available to the Government of Kuwait, the remains of about two thirds of the missing persons might be found and identified. The possibility exists that in a number of cases, the remains of some missing POWs might not be found in the foreseeable future. The Special Rapporteur believes that the international community should remain vigilant and persevere in exerting pressure for the resolution of this purely humanitarian issue.

38. With respect to the relatives of POWs whose remains have not been found and for whom efforts to trace their fate continue, it should be borne in mind that, whereas the pattern of executions suggests that nearly all of the POWs may have been executed, they should be prepared for any eventuality. It should be remembered, though, that hope dies last.

39. The Special Rapporteur strongly condemns the systematic and grave violations of the human rights of Kuwaiti and other third-country nationals who were executed by the Iraqis by order of the highest authority. This is not only a war crime that represents a violation of article 6 of the International Covenant on Civil and Political Rights (the supreme right to life), but it also violates the right of families to know the fate of their loved ones.

40. The Special Rapporteur is of the opinion that close relatives and other dependants of people whose remains have been identified are now entitled to claim compensation. So far, some 2,125 persons have applied for and have been awarded compensation by the United Nations Compensation Commission in respect of crimes and other human rights violations. Compensation was awarded in relation to crimes such as serious personal injury, sexual assault, torture, illegal detention and deprivation of economic resources. The amounts awarded range from $1,000 to $30,000. These awards amply demonstrate the existence of a consistent pattern of human rights violations.

41. The Special Rapporteur proposes to follow closely further developments in the drama of the missing, including identification of remains and claims for compensation.

IV. MASS GRAVES

42. One of the first things that surfaced immediately after the collapse of Saddam Hussein's regime was the question of the mass graves, which revealed the enormity of the crimes and gross violations of human rights committed by the defeated Government. The shock of the revelations and the desire of the people to find out the fate of their loved ones and to give a proper burial to their remains led to a rush on mass graves, without first ensuring that they were secure for a proper investigation. To prevent this from happening, would have needed a resort to force which, probably, would have had innocent victims. It has since been possible to achieve these results, albeit a little late, in respect of some of the mass graves and following a campaign of information.

43. The Special Rapporteur has received considerable information on this matter from the CPA, and held a series of meetings with experts acting on its behalf. The CPA experts also made reference to the specific case of Kuwaiti missing persons.

44. In accordance with the latest information given to the Special Rapporteur, the existence of approximately 273 mass graves sites had been reported at the end of 2003, of which 55 were confirmed as mass graves containing several thousand corpses.

45. Given the enormity of the task and the deteriorating security situation which greatly impedes work on the mass graves, the CPA Office of Human Rights and Transitional Justice, in cooperation with international and non-governmental organizations, as well as with the involvement of the Iraqi leadership, adopted a number of measures to tackle this problem, which could be summarized as follows:

(a) Public awareness and forensic preparations, which included assessment of sites, site selection criteria and initial forensic work;

(b) Forensic site assessment, which included forensic assessment teams deciding on priorities, on the basis of initial investigations;

(c) Forensic examination and security, the purpose of which was to strike a balance between the demands of grieving families and accountability. One of the first steps was to ensure the security of the mass graves. The next would be the deployment of teams of experts to conduct exhumations of grave sites that had been prioritized for forensic examination. In the case of sites that had been subjected to extensive unsupervised diggings, humanitarian response teams were created to deal with the various issues involved. Also, this step provided full forensic support for identification, assisted by the International Committee of the Red Cross and Physicians for Human Rights;

(d) Humanitarian identification and capacity-building, which involves identification and the creation of an Iraqi national bureau for missing persons that would collect and register relevant information. This step also envisages, inter alia, local capacity-building through forensic education of local doctors, training programmes by forensic experts and psychological counselling;

(e) The last measure is the most important one because it deals with the prosecution of crimes. It provides for the transfer of the responsibility for forensic examinations to local authorities, once they have acquired the necessary expertise. The prosecution of criminal acts, as well as the establishment of a central evidence repository, are also envisaged.

46. From the aforesaid it becomes quite clear that work on the mass graves will be difficult and time-consuming and presupposes the existence of necessary data, including accurate lists and database containing all the details required for DNA examinations, and of coordination between the various teams, forensic and other, that carry out work in relation to mass graves.

47. Investigation work so far has mainly retraced the history of the Anfal and Kuwaiti victims, including the arrest, detention and possible execution of missing persons. Apparently, far less progress has been made in respect of the intifada in the south. Work continues mainly on the preparation of accurate lists of missing persons, the security of mass graves and the various stages described above. The Special Rapporteur expects that, fairly soon, he will receive the necessary information to report on further developments and progress.

48. Among the latest information that he was given, the Special Rapporteur received a report prepared by the Human Rights Minister of the Kurdistan Regional Government. It refers mainly to mass graves in Samawa, Diwaniya, Kirkuk and certain other areas where remains of people of Kurdish origin had been found. The report also refers to steps taken to secure graves and to campaigns to ensure the necessary awareness for the protection of the mass graves pending appropriate exhumations and investigations.

49. The Special Rapporteur wishes to stress the importance of NGOs and their assistance in tracing witnesses or survivors of mass executions. In particular, one international NGOs not only made available written evidence to the Special Rapporteur, but also offered to assist in interviewing important eyewitnesses.

V. CONCLUSIONS AND RECOMMENDATIONS

50. **Obtaining new information about violations of human rights and international law by the Government of Iraq proved to be an unexpectedly difficult task because of the continuously deteriorating security situation which forced the United Nations, as well as other international, governmental and non-governmental organizations to evacuate their staff from the country. After a short period of waiting, it became clear that this situation would not improve materially in the near future.**

51. **As a result, the Special Rapporteur initiated a series of alternative arrangements whilst giving priority and most of his time to obtaining the best available evidence and holding the necessary contacts outside Iraq. Despite all these efforts, it proved to be almost impossible to accomplish what he was mandated to do without a visit to Iraq for a number of reasons, including poor communications, changes in appointments and dates, failure of people to turn up, economic constraints, as well as the impossibility of meeting or communicating with important political and religious Iraqi personalities. Therefore, the Special Rapporteur was not able to collect and appraise any significant new evidence on such important issues as the oppression of the majority Shi'ah community, the ecological damage to the Marshlands, religious freedom, and the denial of civil, political, economic, social and cultural rights. Even in respect of certain matters such as the mass graves, the Kuwaiti POWs, and the Anfal and Halabcha campaigns, the security situation which brought so many things to a standstill did not permit these chapters to be included. Unfortunately, much remains to be done in order to complete the task that the Commission requested the Special Rapporteur to carry out, although at the time of the preparation of this report he had made further plans to receive evidence before the presentation of the report to the Commission, to be included in an addendum or in his introductory remarks to the Commission.**

52. **While examining evidence pertaining to such gross and systematic violations as those at Anfal, the Special Rapporteur was constantly receiving evidence of other violations involving torture and cruel treatment or punishment, absence of fair trial, gender discrimination, and a plethora of other violations of the International Covenant on Civil and Political Rights.**

53. **The Office of Human Rights and Transitional Justice of the CPA has made available to the Special Rapporteur evidence recorded in a list cataloguing past atrocities. A selection of approximately 20 serious cases was provided to the Special Rapporteur. Almost 15 different methods of torture were described, in addition to which the Special Rapporteur found corroborative evidence of past allegations of amputations, branding of the forehead and cutting off ears.**

54. **In the light of the Special Rapporteur's findings thus far, he considers it pertinent to make the following recommendations:**

(a) The Iraqi authorities should systematize and accelerate the process of investigation and make available to the Special Rapporteur carefully selected cases of past violations that would permit him to draw the necessary conclusions;

(b) The Iraqi authorities should also establish a quick and effective system of communication with the Special Rapporteur that would ensure the constant flow of information;

(c) Every appropriate step should be taken to ensure that all action in respect of the investigation and possible prosecution of persons suspected of having committed crimes against humanity, war crimes or crimes constituting violations of human rights is carried out in full compliance with Iraq's international obligations, and in particular its obligations under the International Covenant on Civil and Political Rights;

(d) The Special Rapporteur believes that, whereas investigating past violations and prosecuting the perpetrators are essential elements in the democratization process, of equal importance are appropriate efforts to achieve a catharsis by the complete eradication of the culture that was created by several decades of an oppressive and dictatorial regime that did not hesitate to use any means to preserve itself. This process would not only require training, education and awareness, but also the existence of legal provisions and appropriate institutions and mechanisms that people would trust because of their proven or accepted impartiality and effectiveness. The Special Rapporteur urges all concerned to begin this process immediately;

(e) Several interlocutors raised with the Special Rapporteur the issue of the transfer of power to the Iraqis at the earliest possible time, including the effective involvement of the United Nations in the Iraqi democratization process. He therefore felt it appropriate although these issues might not, stricto sensu, be part of his mandate, to express his appreciation of the recent agreement reached on the Law of Administration of the State of Iraq for the transitional period which it is expected will lead to the transfer of power to the Iraqi people and to the improvement of the security situation. Moreover, the Special Rapporteur believes that the experience and expertise of, as well as the trust in the United Nations are essential to the whole democratization process in Iraq.

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